IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

(Chapter's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case
C-482 140/04
Pankaj Bhalla
Vs.
State

Date of Decision 13.7.2005

A.F.R.(Approved for Reporting)
Not approved for reporting

Date : 13.7.05 Initial of Judge

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL
AT NAINITAL

CRIMINAL MISC. APPLICATION NO. 140 OF 2004

Pankaj Bhalla S/o Sri K.K. Bhalla,
R/o 2 old Surway Road, Police Station
Dalanwala Dehradun, District Dehradun, partner
of M/s Bhalla & Sons, 2 Raja Road, Bhagwan
Market Dehradun, District Dehradun
.....Applicant

Versus

1. State of Uttaranchal
Vikas Jindal S/o Sri Dharam Pal Jindal
R/o M/s Jindal Enterprises Ram Nagar,
District Nainital
.....Respondents

Hon'ble J.C.S. Rawat, J.

1. Heard Sri Sandeep Tandon learned counsel for the applicant and Sri Vikas Pandey learned counsel for respondent no.2 and perused the record.

2. This is a petition u/s 482 Cr.P.C. for setting aside the order-dated 03.01.2004 passed by the Judicial Magistrate, RamNagar, district Nainital in criminal case no.31/2004 State Vs. Pankaj Bhalla and others and also for quashing the chargesheet dated 25.11.2003.

3. The brief facts are that a FIR was lodged at P.S. Ram Nagar against the applicant and others under sections 420/406 IPC and a charge sheet was also submitted against the applicant and other accused persons. It was agreed in between M/s Royal Foods Products Ltd. Lucknow and M/s Jindal Enterprises Ram Nagar that the goods, which are manufactured by M/s Royal Foods Products Ltd, would be sent to M/s Jindal Enterprises at Ram Nagar and the applicant will be the

consignee agent of the said concern. It is also in the FIR that in pursuant to the said agreement Rs.80,000/- and Rs. 20,000/- were given by way of bank draft. The present applicant was engaged by M/s Royal Foods Product Ltd as C & F agent of Uttaranchal. The applicant has only to transport the said articles obtained from M/s Royal Foods Products Ltd in Uttaranchal. In pursuance to the said agreement the applicant dispatched the goods of Rs. 51,408.00 to respondent no.2 on 10.7.2002 for which M/s Royal Foods Products Ltd received the payment by bank draft directly. After investigation the charge sheet was submitted before the court below.

4. The court below after perusing the entire evidence took the cognizance under sections 420 and 406 IPC and summoned the applicant and others vide impugned order. Feeling aggrieved by the said order, the applicants have filed this petition.

5. The learned counsel for the applicant contended that the dispute between the applicant and the complainant-respondent No.2 was purely of a civil nature arising out of contractual relationship with regard to commercial transaction. Even looking to the sworn statements and the notice-dated 8.10.2002, no case is made out to proceed against the applicant on the criminal side. It was further contended that the essential ingredients of the offence under section 406 IPC are not made out, as the applicant had no intention at the initial stage to dishonestly misappropriate the said goods. It was further contended that the applicant is merely a forwarding agency and he has to carry out the

directions issued by M/s Royal Foods Product Ltd and he only on the directions of M/s Royal Foods Products Ltd dispatched the articles to M/s Jindal Enterprises. He has nothing to do with the transaction arrived in between the parties by way of agreement. The learned counsel for the applicant further contended that the learned Magistrate committed a serious manifest error in issuing the process against the accused persons. The learned counsel for the applicant further contended that the process against the accused persons is patently illegal and unjustifiable and the applicant has not arrayed M/s Royal Foods Products Ltd as an accused in the said proceedings. The learned counsel for the respondent no.2 refuted the contentions and submitted that a prima-facie case is made out against the accused persons.

6. Before examining the respective contentions of the parties, I would like to discuss the legal position in this regard. Every breach of trust may not result in a penal offence of breach of trust unless there is evidence of mental act of fraudulent misappropriation. An act of breach of trust involves a civil law in respect of which the person wrongs may seek his redressal for damages in civil court, but a breach of trust with mens rea, gives a right to criminal prosecution as well. In order to constitute an offence of a criminal breach of trust the essential ingredients are:-

(i) entrusting a person with property or with any dominion over property,

(ii) that person entrusted (a) dishonestly misappropriating or converting that property to his own use; or (b) dishonestly using or disposing of

that property or willfully suffering any other person so to do in violation (i) of any direction of law prescribing the mode in which such trust is to be discharged, (ii) of any legal contract made, touching the discharge of such trust or any legal contract, express or implied, which he has made touching the discharge of such trust, or willfully suffers any other person so to do commits ‘criminal breach of trust’.

7. In order to constitute an offence of a criminal breach of cheating the essential ingredients are:-

(i) There should be fraudulent or dishonest inducement of a person by deceiving him

(ii) The person so deceived should be entrusted to deliver any property to any person or to consent that any person shall retain any property or (b) the person so deceived should be intentionally induced to do or omit to do anything which he would not do or omit if he were not so deceived, (iii) In cases covered by the said act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to “cheating”.

8. In determining the question it has to be kept in mind that distinction between mere breach of contract and the offence of cheating is a very fine one. It depends upon the intention of the accused at the time of the inducement, which may be judged by the

subsequent conduct but for this subsequent conduct is not the sole test. Mere breach of contract cannot give right to the criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning of the transaction. That is the time when the offence is said to have been committed. Therefore, it is the intention or mens rea, which is the gist of the offence to hold a person guilty of cheating at the time of making the promise. From his mere failure to keep a promise subsequently such an intention at the beginning that is when he made the promise cannot be presumed. In the present case it is evident that the draft of Rs. 80,000/- and 20,000/- which were given to the applicant were handed over to M/s Royal Foods Products Ltd and it is also evident from the statement of the Bank Manager that the said amount which was entrusted to the applicant was handed over to M/s Royal Foods Products Ltd through the applicant and the payment has been made to the company. As such the applicant has not committed any offence in this regard. The applicant was C & F agent of M/s Royal Foods Product Ltd. He has to only carry out the instructions of the company and in pursuance to the instructions of the company and in pursuance to the instructions of the company he supplied the goods to M/s Jindal Enterprises and it was not the duty to either distribute or to carry out any obligation under the agreement arrived at in between the parties. The applicant was not a party to the agreement arrived at in between the parties. From the material that was placed before the learned Magistrate even prima-facie it cannot be said that there was any conspiracy or there was any intention on the part of the applicant. If the

applicant has committed any breach of agreement it is open to the complainant to seek redressal in a competent court of forum to recover the damages if permissible in law in case he has sustained any loss. In order to constitute an offence of cheating the intention to deceive should be in existence at the time when the inducement was made. It is necessary to show that a person had fraudulent or dishonest intention at the time of making the promise to show that he had committed an act of cheating. Looking to the chargesheet and the FIR and other relevant documents and the grievance made by the complainant and having regard to the agreement it is clear that the dispute and grievance has arising out of the agreement and the complainant has not arrayed M/s Royal Foods Products Ltd Lucknow as a party in these criminal proceedings.

It is alleged in the FIR and other documents that the said goods were delivered to M/s Jindal Enterprises and the person who has to distribute the articles did not turn up at Ram Nagar. It is further alleged in the FIR that the said articles were kept in the custody of M/s Jindal Enterprises. As such, I find that this is purely a case of civil nature and there is no mens rea on the part of the applicant. The applicant had neither signed any documents with respondent no.2 on behalf of M/s Royal Food Products Ltd. The applicant only forwarded the above goods to respondent no.2 on the directions of M/s Royal Food Products Ltd. Lucknow.

9. In view of the foregoing discussions, I find that the order dated 3.1.2004 is liable to be quashed and the petition is liable to be allowed.

10. The petition is allowed and order dated 3.1.2004 passed by the Judicial Magistrate, Ram Nagar district Nainital in criminal case no. 31 of 2004 and the charge sheet dated 25.11.2003 submitted by the police in crime case no. 784 of 2004 are quashed.

(J.C.S. Rawat, J.)

Dated: 13.7.2005
MPS